

VZCZCXR06810

PP RUEHDBU RUEHFL RUEHKW RUEHLA RUEHROV RUEHSR  
DE RUEHVJ #0677/01 0861739

ZNY CCCCC ZZH

P 271739Z MAR 07

FM AMEMBASSY SARAJEVO

TO RUEHC/SECSTATE WASHDC PRIORITY 5774

INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY

RUEAIIA/CIA WASHINGTON DC PRIORITY

RHEFDIA/DIA WASHINGTON DC PRIORITY

RUEKJCS/JCS WASHINGTON DC PRIORITY

RHEHNSC/NSC WASHDC PRIORITY

RUEKJCS/SECDEF WASHDC PRIORITY

RUFOAOA/USNIC SARAJEVO PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 SARAJEVO 000677

SIPDIS

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DEPARTMENT FOR EUR(DICARLO), EUR/SCE(STINCHCOMB/HOH),  
S/WCI(WILLIAMSON/LAVINE); NSC FOR BRAUN

E.O. 12958: DECL: 03/26/2017

TAGS: PHUM KCRM KJUS PGOV PINR PREL BK

SUBJECT: BOSNIA - THE CHALLENGE OF WAR CRIMES PROSECUTIONS  
IN SREBRENICA

REF: A. SARAJEVO 579

- 1B. 06 SARAJEVO 3069
- 1C. 06 SARAJEVO 1674
- 1D. 05 SARAJEVO 939
- 1E. 05 SARAJEVO 246

Classified By: Political Counselor Michael J. Murphy, Reason 1.4 (B) and (D).

¶1. (C) SUMMARY: Prior to the International Court of Justice (ICJ) verdict, Srebrenica victims associations had often appealed for U.S. help in bringing to justice local police or other officials they "knew" to be war criminals. Last week the Srebrenica Municipal Council identified the Republika Srpska (RS) government's failure to suspend or dismiss people on the Srebrenica Commission Working Group's (SCWG) list of alleged war criminals as one of their justifications for wanting to secede from the RS. The BiH State Prosecutor's Office contends that the list of 810 people does not contain actionable information, and the prosecution team lacks sufficient man-power to develop cases from scratch. At the same time, a political solution that would remove this issue from the dialogue over the future status of Srebrenica Municipality in BiH appears unlikely. END SUMMARY.

THE SREBRENICA COMMISSION LIST: WHAT IS IT AND WHO'S ON IT

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¶2. (C) In December 2004, then-High Representative Paddy Ashdown issued a decision requiring the Republika Srpska National Assembly (RSNA) to appoint a working group for the "Realization of the Conclusions From The Final Report of the Srebrenica Commission," which chronicled events in and around Srebrenica on 10-19 July 1995. The RSNA created the Srebrenica Commission's Working Group (SCWG) in January 2005 (REF. E). It was tasked to analyze the information contained in the confidential annexes of the final Srebrenica Commission Report, and identify persons mentioned in those annexes who allegedly committed war crimes but were still employed in entity and state-level institutions.

¶3. (C) In late-March and early-April 2005 the multi-ethnic SCWG, supervised by the European Police Mission (EUPM), released a list to the RSNA, OHR and the BiH State Prosecutor's Office of over 800 people that the SCWG believed to have some connection to the July 1995 events in Srebrenica. The confidential list, which the Office of the High Representative (OHR) shared with the Embassy at the

time, was comprised of over 500 RS Interior Ministry officials, primarily police officers, and 300 other individuals employed in local and state-level public institutions, including OSA, SIPA, the State Border Service, and others. (NOTE: The list indiscriminately names individuals serving in or near Srebrenica and Bratunac in military and non-military capacities between July 10-19, 1995. Even victims associations agree that, because of its breadth, the list may include people who are innocent of any connection to war crimes. END NOTE.)

2005-2007: NO DISMISSALS, ATTENTION ON THE LIST WANES

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¶4. (C) In mid-April 2005, then-RS Minister of Interior Matijasevic told the Ambassador he would form a joint team of RS Interior Ministry SIPA, the BiH State Prosecutor, and international community (IC) representatives to conduct investigations of those on the list (REF. D). This was never done. Instead, the RS government passed responsibility for taking action to OHR and the BiH Prosecutor's office. OHR declined to unilaterally remove named individuals from public office. It complained, inter alia, that to suspend or dismiss them absent an investigation launched by a BiH prosecutor would violate due process norms.

¶5. (C) Since then, little has happened, and interest in the list had largely faded. Neither the RS nor the State government has dismissed or suspended any individuals based on the fact that their names appeared on the list. The controversy flared up briefly during the fall 2006 elections, when names were leaked to the press and some politicians, notably then-BiH Presidency Chair Suljeman Tihic (trying to burnish his Bosniak credentials), called for BiH Chief

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Prosecutor Marinko Jurcevic to release the entire list (REF. C). Jurcevic, with backing from the IC and OHR, refused, saying it could jeopardize ongoing investigations.

PROBLEMS WITH PROSECUTING PEOPLE ON THE LIST

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¶6. (C) However, in the wake of the ICJ's verdict that genocide had been committed in Srebrenica, interest in taking action against those on the list has resurfaced among local politicians and the press. The recently established "Initiative Board for the Special Status of Srebrenica" cited the failure of RS authorities to remove people on the list from public office as one of the reasons Srebrenica should be given special "district" status (REF. A), and called on BiH officials to take immediate action to prosecute them as war criminals. Last week, Tihic suggested that a special satellite State Prosecutor's Office might be established in Srebrenica to fast-track cases involving people on the list who may still hold official positions in the Srebrenica municipality, particularly in law enforcement.

¶7. (C) On March 26, BiH State Prosecutor Ibro Bulic, head of the State Court's four-man Srebrenica war crimes prosecution unit, explained the resource constraints and evidentiary difficulties involved in implementing this initiative effectively. Bulic said the SCWG list included a wide range of people who worked in military and paramilitary units and local civilian administration in the Srebrenica area at the time of the genocide. It gave no information on what position they held or what role, if any, they might have played in perpetrating atrocities, and therefore was not itself evidence that a person committed a war crime. Building a case starting with just a name required man power, and Bulic said his was very limited. The Srebrenica prosecution team had only one court investigator. There were also 10 SIPA war crimes officers for field work, but the Srebrenica team shared those officers with the State Prosecutor's other five war crimes units, each responsible for a different geographic area in BiH.

¶8. (C) Bulic said his team had prosecuted four of the 810 names it received, and was investigating a fifth person. However, those five cases proceeded based on independent physical and testimonial evidence; the fact that their names were on the SCWG list was coincidental. He said the list was useful for war crimes prosecutions, but not in the way people might expect. For example, 11 men are currently on trial in State Court for the mass execution of 7-8,000 Bosniak males at the Kravica Farming Cooperative warehouse on July 11, 1995 (REF. B). While a Srebrenica survivor might claim to "know" that someone currently working as a police officer took part in that massacre, fewer than 15 Bosniaks actually survived the attack, and none of them could positively identify the shooters, Bulic explained. However, prosecutors were able to use the SCWG list to find five Serb eye witnesses willing to testify against the 11 accused.

COMMENT

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¶9. (C) The undoubted presence of war criminals in Srebrenica and surrounding municipalities certainly fuels the emotional discussion over the future of Srebrenica's political relationship with the RS. Part of the problem with the debate over this issue is the general perception that an individual's presence on the list is *prima facie* evidence that he committed a war crime. This is not the case. As a consequence, OHR's use of Bonn Powers to dismiss anyone on the SCWG list from RS employment -- a course rejected by OHR in 2005 -- would almost surely raise strong human rights objections. At the same time, the State Prosecutor faces several resource and evidentiary obstacles with its investigations of these individuals. Fast-tracking some investigations in order to neutralize the political impact of this issue would draw away important resources from other, more fully developed war crimes cases and would not necessarily result in convictions.

MCELHANEY